

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIKE, INC.,

Plaintiff,

- against -

BY KIY LLC, et al.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/23/2023

22 Civ. 10176 (VM)

ORDER

VICTOR MARRERO, United States District Judge.


On February 6, 2023, and consistent with the Court's Individual Practices, counsel for defendants Reloaded Merch LLC and Bill Omar Carrasquillo (collectively, the "Moving Defendants") sent counsel for plaintiff Nike, Inc. ("Plaintiff") a pre-motion letter identifying alleged deficiencies in the Complaint that Plaintiff filed in this action, and that allegedly would provide a basis for a motion to dismiss. (See Dkt. No. 47.) On February 13, 2023, also consistent with the Court's Individual Practices, counsel for Plaintiff filed a letter in response, opposing the grounds that the Moving Defendants stated in favor of the proposed motion. (See Dkt. No. 54.) On February 21, 2023, the Court received a letter from counsel for the Moving Defendants asserting that the letter exchange did not resolve the dispute and thus failed to avoid motion practice at this stage of the proceedings. (See Dkt. No. 58.) Counsel further requested

that the Court grant the Moving Defendants leave to file a full motion to dismiss. On February 22, 2023, counsel for Plaintiff filed a response letter challenging the Moving Defendants' letter, dated February 21, 2023, on the grounds that it constituted a substantive reply letter brief. (See Dkt. No. 59.) Counsel for Plaintiff further requested that the Court strike the letter and deny the Moving Defendants' request for leave to file a motion to dismiss.

Upon review of all pre-motion letters, the Court hereby denies Plaintiff's request to strike the Moving Defendants' letter, dated February 21, 2023, and its request to deny leave to file a motion to dismiss. Within seven (7) days of the date of this Order, the parties shall notify the Court whether they consent to the Court deeming the pre-motion letters as a fully briefed motion to dismiss and ruling on the basis of the letters, or whether the parties request supplemental or full briefing on the Moving Defendants' proposed motion. If the parties request supplemental or full briefing, they shall submit a proposed briefing schedule within seven (7) days of the date of this Order.

SO ORDERED.

Dated: 23 February 2023
New York, New York


Victor Marrero
U.S.D.J.